THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.6064 of 2003

ORDER:

This writ petition has been filed by the petitioner seeking Writ of *Mandamus* declaring the proceedings No.38188/T.A.2/AEE.2/2000 dated 05-07-2000 passed by the 3rd respondent-Engineer-in-Chief, R&B Department, Government of Andhra Pradesh, Hyderabad as null and void and to declare that no consequence do ever flow from so far as the writ petitioner is concerned; further to direct the respondents to refrain from taking into account or be interested in any manner by the proceedings dated 05-07-2000 blacklisting the petitioner or any other relevant criteria while awarding any contracts/works to him and further to direct the 5th respondent-Superintending Engineer, Irrigation Circle, Vijayawada, to refrain from taking any action against him based on the proceedings dated 05-07-2000 or any other relevant criteria while finalizing the tenders bearing No.DB/D2/11/2002-2003 dated 08-12-2002 opened by him on 03-01-2003.

The petitioner challenged the impugned proceedings dated 05-07-2000 issued by the 3rd respondent–Engineer-in-Chief. By virtue of the impugned proceedings, the petitioner has been blacklisted on the ground of producing false certificates.

It is the case of the petitioner that he is a Class-I contractor

undertaking civil engineering works for various State Governments like Andhra Pradesh, Tamil Nadu, Orissa, Karnataka and Madhya Pradesh. The 5th respondent has issued tender notice No.DB/D2/11/2002-2003 dated
08-12-2002 inviting sealed tenders for the works of formation of new tanks across Chevitivagu near Choutapalli village, Veerulapadu Mandal, Krishna District, Andhra Pradesh. Approximately, the value of the project was Rs.64.44 lakhs. The project work was to be completed within a period of six months. Since he had fulfilled the eligibility criteria to participate in the tender, he purchased the schedule in pursuance of the tender notice dated 08-12-2002 and submitted his offer on 01-01-2003. The 3rd respondent has opened the tender on 03-01-2003 at 11.00 a.m. in his office at Vijayawada. In all, only three bids were received for the above project work. Out of the three bidders, the petitioner was found to be the lowest, as he quoted the price less than the estimated value of the project work. The other two bidders have quoted at far above prices than the estimated value of the project work i.e. 9.11%. As a result of which,
it has almost become clear that the above project work was to be granted to the petitioner since he enclosed all the necessary certificates/proof documents in support of his tender and after scrutiny of the said certificates his tender was accepted by virtue of the rates quoted by him, therefore he was found to be eligible for awarding the said project work.

At this stage, rival tenderer lodged a protest with the

5th respondent stating that the petitioner's tender should be rejected on the plea that the Engineer-in-Chief (R&B) had blacklisted him in view of certain discrepancies noticed in the tender documents filed by him for the work of construction of a high level bridge at Km. 23/4 of Ventrapragada-Kundavalli road across Budamaru in Krishna District and that the Engineer-in-Chief, R&B has passed orders blacklisting the petitioner in the month of July, 2000 itself. Further the rival tenderer also filed W.P. No.11466 of 1999 before this Court soliciting directions to the Commissionerate of Tenders to undertake the verification of the certificates produced by the petitioner in response to the tenders invited for the said work. In the said writ petition, this Court called for a report relating to the documents enclosed by the petitioner along with his tender. The Commissionerate of Tenders filed an adverse report against the petitioner stating that on verification it found certain discrepancies with regard to the quantities mentioned in the certificates issued by the officials of the South Eastern Railways and RITES, Chennai. This Court also found that the certificates furnished by the petitioner did not contain accurate information with regard to the quantities of the works executed by him for the relevant period. On the basis of the said report, this Court passed an order dated

28-07-1999 restraining the petitioner from executing any work relating to the construction of High Level Bridge across Budameru. Consequently, the Executive Engineer R&B, Machilipatnam has terminated the said contract. Except the order dated 11-08-1999, terminating the contract passed by the

Executive Engineer R&B, Machilipatnam in agreement Cr. No.29/99-2000, no orders were ever passed or communicated to the petitioner by the State Government or the Engineer-in-Chief, R&B Department. It is submitted that in response to the orders dated 11-08-1999, the petitioner lodged his protest on 30-08-1999 disputing the basis for terminating the agreement in question. It is his case that though in the said protest representation, he explained that he complied with all the conditions and never produced

false certificates or furnished any false information,

the 3rd respondent has issued the impugned proceedings terminating the contract of the petitioner and he was blacklisted on the following grounds.

(i) "He is falling short in executing of well sinking quantity of 150 RMS.

(ii) The Chief Project Manager, RITES, vide letter dt.1.7.99 has informed that the certificates issued by them on 6.1.99 and 18.3.99 are confirmed and further stated that Sri K.V. Mohan Rao contractor executed cement concrete of 2602.431 Cum and other concrete of 2079.442 Cum against the quantities of PCC/VCC 4600 Cum and RCC 1200 Cum mentioned in the earlier certificate issued on 5.1.99. The Chief Project Manager has also mentioned therein that the financial progress during the year 1995-96 as Rs.104.00 lakhs and during

1996-97 as Rs.375.39 lakhs (including

cost of supply of materials by Department) against Rs.70.00 lakhs and Rs.390.00 lakhs respectively. “

The main ground that is urged in the writ petition is that before issuing the impugned order, no opportunity was provided to the petitioner offering his explanation. Therefore, the impugned proceedings are in utter violation of the principles of natural justice.

Learned counsel appearing for the petitioner contends that the petitioner has fulfilled the eligibility criteria of executing certain quantities of works by submitting all the necessary certificates along with the tender schedule and after due verification of the same, the petitioner was found to be eligible to participate in the tender. Thereafter the authorities have issued the tender to the petitioner.

As aforesaid, among three bidders participated in the tender, the petitioner was found to be least bidder quoting the price at less than the estimated work. But instead of awarding the contract to the petitioner, under the guise referred supra, without providing an opportunity of making representation, the impugned proceedings has been issued blacklisting him, thereby he is deprived of his legitimate rights of doing the contract business, therefore the impugned proceedings are in utter violation of principles of natural justice. In support of his contention, the learned counsel relied on the judgment of the Apex Court in ***GROSONS PHARMACEUTICALS (P) LTD. AND ANOTHER v. STATE OF U.P. AND OTHERS***[1].

Denying the averments of the petitioner made in the affidavit, respondents 3 and 5 filed their counter affidavits wherein it is stated that the registration of the contractors is effected as per the provisions of G.O.Ms. No.521, Irrigation (Projects Wing) Department, dated 10-12-1984. The said Government Order is comprehensive in respect of the norms and procedure for registration, Demotion, Removal, Suspension of Business and Blacklisting of contractors.

The petitioner having been registered as a Class-I contractor, cannot therefore claim ignorance of the said Government Order. It is pointed out that clause 6 of the said Government Order deals with blacklisting of contractors and as per clause 6(2), orders passed blacklisting the contractor should not be communicated to him.

Learned Government Pleader appearing for the respondents contends that the petitioner is governed by the rules contemplated under G.O.Ms. No.521 dated 10-12-1984 and the said Government Order contemplates not to assign any reasons to the contractors for blacklisting them. Therefore, the petitioner is not entitled to any such notice and in view of the same the contention that the impugned proceedings are in violation of principles of natural justice is untenable. He also maintained that pursuant to the direction given by this Court in W.P. No.11466 of 1999, the certificates said to have been issued by the South Eastern Railways and RITES, Chennai enclosed by the petitioner along with the tender notice have been verified and found that the

information contained therein with regard to the quantity of works was not correct, thus it came to the light that the petitioner has furnished wrong information to the department. Therefore, as per the powers vested with the authorities under G.O.Ms.No.521 dated 10-12-1984, the 3rd respondent rightly issued the impugned proceedings blacklisting the petitioner.

During the course of arguments, learned Government Pleader brought to the notice of this Court about the amendment to Clause 6(2) of the Rules made in G.O.Ms. No.521 dated 10-12-1984. Before the amendment of the said Government Order, Rule 6(2) deals with as follows:

> "Orders for black listing of a Contractor should not be communicated to him."

After the amendment of the said Government Order vide G.O.Ms. No.9 Irrigation & CAD (Projects Wing.COD) Department dated 19-01-2001, Rule 6(2) reads as follows:

> "Contractor should be given an opportunity of two weeks time for offering explanation on the proposal to black list him before taking a final decision."

As could be seen from the G.O.Ms. No.9 dated 19-01-2001 whereunder there was an amendment to Rule 6(2) of Part-B of the G.O.Ms. No.521 I&CAD (PW) Department, dated 10-12-1984 which contemplates for giving an opportunity of two weeks time for offering the explanation on the proposal to blacklist

any contractor before taking a final decision.

Learned counsel for the petitioner submits that since there is an amendment to Rule 6(2) of G.O.Ms.No.521 which provides an opportunity of two weeks time for offering explanation on the proposal to blacklist the contractor before taking a final decision, this Court may declare the impugned proceedings as illegal and in violation of principles of natural justice as held by the Apex Court in the case referred supra. The relevant portion of the said judgment at para 2 reads as follows:

> "Learned counsel appearing for the appellant urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show-cause notice were based along with the show-cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State Government and the said relationship is not governed by the statutory rules. There is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show-cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi

> alteram partem which is one of the facets of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based, was not the requirement of the principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show-cause was given to the appellant before it was balcklised. It is not disputed that in the present case, the appellant was given an opportunity to show cause and it did reply to the show-cause which was duly considered by the State Government. We are, therefore, of the view that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice."

The Apex Court held that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of *audi alteram partem* which is one of the facets of the principles of natural justice.

Learned Government Pleader also submits that since the G.O.Ms. No.521 dated 10-12-1984, after its amendment to Rule 6(2), itself contemplates for providing the opportunity to the petitioner for offering explanation on the proposal to blacklist the contractor before taking a final decision, such an opportunity may

be provided to the petitioner and thereafter it is left open to the authorities to pass necessary orders,
in accordance with law.

Having regard to the submissions made by the learned counsel for the petitioner as well as the learned Government Pleader, I am of the considered view that the impugned proceedings dated 05-07-2000 issued by the 3rd respondent is in violation of the principles of natural justice as no opportunity was afforded to the petitioner before issuing the said proceedings as such the same is liable to be set aside and is accordingly set aside.

As the impugned proceedings have been set-aside only on the ground of non-observance of principle of *audi alteram partem*, it is observed that, this order does not preclude the authorities from passing appropriate order in accordance with law.

The Writ Petition is allowed. No order as to costs.

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JUSTICE G. CHANDRAIAH

Date: 26-07-2006

Note: Furnish the certified copy
of the order in four days.
B/o.
LSK

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[1] (2001) 8 SCC 604